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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201703
Party	Defendant Istituto Italiano Sicurezza dei Giocattoli S.r.l.
Correspondence Address	MARK LEBOW YOUNG & THOMPSON 209 MADISON ST , STE 500 ALEXANDRIA, VA 22314-1764 UNITED STATES mlebow@young-thompson.com, jgoehring@young-thompson.com
Submission	Answer
Filer's Name	Mark Lebow
Filer's e-mail	mlebow@young-thompson.com, jgoehring@young-thompson.com
Signature	/s/ Mark Lebow
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MICHAEL BRANDT FAMILY TRUST
d/b/a ECO-SAFE OF DALLAS,

Opposer,

v.

ISTITUTO ITALIANO SICUREZZA
DEI GIOCATTOLE S.R.L.

Opposition No. 91201703

ANSWER AND RESPONSE TO FIRST AMENDED NOTICE OF OPPOSITION

For its response to the First Amended Notice of Opposition filed by Michael Brandt Family Trust (“MBFT”) Istituto Italiano Sicurezza Dei Giocattoli S.R.L. (“Sicurezza”) states as follows:

Likelihood of Confusion Under Section 2(d)

- 1) Applicant has insufficient knowledge to form a belief as to the truth of Opposer’s allegations in numbered paragraph 1 of the First Amended Notice of Opposition and denies the same for that reason.
- 2) Applicant has insufficient knowledge to form a belief as to the truth of Opposer’s allegations in numbered paragraph 2 of the First Amended Notice of Opposition and denies the same for that reason.
- 3) Applicant has insufficient knowledge to form a belief as to the truth of Opposer’s allegations in numbered paragraph 3 of the First Amended Notice of Opposition and denies the same for that reason.

4) Applicant admits that Opposer indicates reliance on Registration Nos. 1749733, 1631876 and 1303116. Applicant has insufficient knowledge to form a belief as to the truth of Opposer's remaining allegations in numbered paragraph 4 of the First Amended Notice of Opposition and denies the same for that reason.

5) Denied.

6) Denied.

7) Admit.

8) Applicant has insufficient knowledge to form a belief as to the truth of Opposer's allegations in numbered paragraph 8 of the First Amended Notice of Opposition and denies the same for that reason.

Fraud and/or Violation of the Anti-Use by Owner Rule for Certification Marks

9) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph. Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would admit that it is an institution based in Italy that certifies products manufactured by others as to whether such products meet specific standards related to environmental friendliness, and would deny the remainder of this claim.

10) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph. Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would respond that the record of Applicant's application and its file history speaks for itself and would deny this allegation on that basis.

11) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph. Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would deny this allegation.

12) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph. Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would deny this allegation.

13) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph. Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would deny this allegation.

14) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph. Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would deny this allegation.

15) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph. Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would deny this allegation.

16) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph.

Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would deny this allegation.

17) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph. Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would deny this allegation.

18) Applicant files herewith a Motion to Dismiss Opposer's fraud claim and Opposer's claim that Applicant's application is void *ab initio*, which are based on the allegations in this paragraph. Accordingly, no response is required. However, Applicant states that, should its Motion be denied, it would deny this allegation.

AFFIRMATIVE DEFENSES

- a) MBFT fails to state a claim for fraud.
- b) MBFT fails to plead its fraud claim with the requisite particularity.
- c) MBFT fails to support the knowledge and intent elements of its fraud claim with alleged facts.
- d) MBFT trust fails to state a claim that Applicant's application is void or void *ab initio*.
- e) MBFT's claim that Applicant's application is *void ab initio* requires a more definite statement regarding the factual basis of the claim.
- f) Sicurezza's application cannot be void or void *ab initio* as a matter of law because Sicurezza had a bona fide intent to use its mark with at least some of the goods and services listed in its application.

- g) There are extensive third party uses and registrations for MBFT's mark.
- h) The marks asserted by MBFT are weak and are afforded only a very narrow scope.
- i) The marks asserted by MBFT lack distinctiveness and are not incontestable.

February 24, 2012

Respectfully submitted,

/Mark Lebow/
Mark Lebow
Attorney for Applicant
Young & Thompson
209 Madison Street, Suite 500
Alexandria, VA 22314

Certificate of Service

I herby certify that the within ANSWER AND RESPONSE was served on this 24th day of February 2012 via U.S. mail, postage prepaid, to the below listed counsel of record for Applicant:

Barth X. deRosa
Dickinson Wright PLLC
1875 Eye Street NW, Suite 1200
Washington, DC 20006

/hpm/
Hue Morrison